

REMARKS

Reconsideration of this application, as amended, is respectfully requested.

Summary of the Office Action

The applicant provisionally elected, without traverse, to prosecute claims 1-20 and 59-61.

Claims 1-17 and 59-61 stand rejected under § 103(a) as allegedly being anticipated by Itakura et al. (U.S. patent 5,901,149) in view of Rusu et al. (U.S. patent 6,141,323).

Claims 18-20 stand rejected under § 103(a) as allegedly being anticipated by Itakura et al. (U.S. patent 5,901,149) in view of Rusu et al. (U.S. patent 6,141,323) and further in view of Applicant's admitted prior art.

A. Rusu and Itakura or a combination thereof do not teach a retrieval rate and a monitoring rate that are responsive to a difference between the buffer behavior pattern to a predefined buffer behavior pattern.

Independent claims 1, 17 and 59 were amended to recite: "wherein the retrieval rate and the monitoring rate are responsive to a difference between the buffer behavior pattern to a predefined buffer behavior pattern", originally included in claim 5 (now cancelled). Claim 5 was rejected as being obvious in view of Itakura (column 4 lines 1-21), when considered in combination with Rusu (column 7, lines 60-64 and column 8, lines 49-52). However, these references do not disclose the recited features of these claims, and especially do not disclose a monitoring rate that is responsive to a difference between the buffer behavior pattern to a predefined buffer behavior pattern.

The office action concedes that Itakura does not disclose an adjustment of a monitoring rate.

Rusu, column 7, lines 60-64 reads as follows:

By providing a programmable time interval circuit (103), the system can compensate and adapt to cell flow and statistics by shortening the time interval to gain more frequent samples of differential flow rate to permit quicker external adjustment thereto and slow down as appropriate. Additionally, or alternatively, to gain additional resolution or greater accuracy, a counter larger than six bits can be utilized. These decisions are a design performance/cost decision.

Rusu, column 8, lines 49-52 reads as follows:

The advantage of the proposed method and apparatus is that the queue increase/decrease information (the measurement value) is

obtained at fixed (or programmable or known) time intervals,
and is propagated (in the form a two's complement integer)
across the switch.

The mere fact that Rusu can adjust the monitoring rate does not mean that the adjustment is done according to a difference between a buffer behavior pattern to a predefined buffer behavior pattern. That is, Rusu does not provide an enabling description of this feature of the presently claimed invention. Moreover, Rusu and Itakura do not teach that both the monitoring rate and the retrieval rate are both set in response to a difference between the buffer behavior pattern to a predefined buffer behavior pattern. Hence, the claims are patentable over these references.

B. Rusu and Itakura or a combination thereof do not teach a retrieval rate and a monitoring rate that are responsive to low frequency changes in the level of time restricted data in the buffer.

Dependent claim 6 was converted to an independent claim by adding the features of original claim 1 to original claim 6. In addition two new independent claims (62 and 62) were introduced. New claims 62, 63 and independent claim 6 recite: "wherein the retrieval rate and the monitoring rate are responsive to low frequency changes in the level of time restricted data in the buffer.

Claim 6 was rejected as being unpatentable over Itakura (column 4 lines 1-21), in view of Rusu (column 7, lines 60-64 and column 8, lines 49-52). However, these references do not disclose the features of these claims, and especially do not disclose a monitoring rate that is responsive to low frequency changes in the level of time restricted data in the buffer.

The office action concedes that Itakura does not disclose an adjustment of a monitoring rate.

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The mere fact that Rusu can adjust a monitoring rate does not mean that the adjustment is done according to low frequency changes in the level of time restricted data in the buffer. That is, Rusu does not provide an enabling description of this feature of the presently claimed invention. Moreover, Rusu and Itakura do not teach that both the monitoring rate and the retrieval rate are both set in response to low frequency changes in the level of time restricted data in the buffer.

C. The combination of Rusu and Itakura is improper and so the claims should be allowed.

In rejecting independent claims 1, 17 and 59 the examiner admitted that Itakura does not expressly disclose that the controller sets the monitoring rate (of the level of time restricted data in a buffer) and therefore relies on Rusu for teaching this aspect of the claimed invention. In doing so, the examiner merely stated that “it would have been obvious to one of ordinary skill in the art at the time of the invention to have the controller set the monitoring rate in order to allow the controller to adjust the monitoring rate as appropriate”. Such a rejection is improper.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Here, the examiner has failed to establish a prima facie case of obviousness, and especially failed to indicate where a suggestion or motivation to combine these references can be found. The mere fact that Rusu discloses a controller that can adjust a monitoring rate of a buffer does not provide a motivation to combine the teachings of Rusu and Itakura and especially does not teach one of ordinary skill in the art that the same controller adjusts both the monitoring rate and the retrieval rate as presently claimed. With no supporting motivation to combine the references in the manner contemplated in the office action, the rejection of the claims in light of such a combination is improper.

D. Additional remarks

The previously added limitation “according to an estimated time between desired arrival times of two successive packets of the time restricted data” was removed from independent claims 1, 17 and 59 because this limitation is not required for distinguishing the claims invention from the prior art.

E. Conclusions

In view of the foregoing amendments, claims 1, 17, 59, 62 and 63 should be allowed. Claims 2-4 and 6-16 depend upon claim 1 and claims 60 and 61 depend upon claim 59. hence, these dependent claims are likewise allowable over the cited art.

Moreover, because the combination of Rusu and Itakura was improper for at least the reasons set forth above, the claims should be allowed.

Respectfully submitted,

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Date: July 24, 2006

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